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3 **UNITED STATES DISTRICT COURT**  
4 **DISTRICT OF NEVADA**

5 \* \* \*

6 Rickie Hill,

7 Plaintiff,

8 v.

9 Harper,

10 Defendant.

Case No. 2:20-cv-01655-KJD-DJA

**Order**

11 Before the Court are

- 12 • Plaintiff's motion to remove Senior Deputy Attorney General Douglas Rands and  
13 staff members of the Office of the Attorney General: R. Bibee and C. Fondi.  
14 (ECF No. 8).
- 15 • Plaintiff's second motion to remove Rands, Bibee, and Fondi (ECF No. 11).
- 16 • Plaintiff's motion for appointment of counsel (ECF No. 12).
- 17 • Plaintiff's motion to include an exhibit to his motion to appoint counsel (ECF No.  
18 13).
- 19 • Plaintiff's "motion of inquiry" (ECF No. 15).
- 20 • Plaintiff's motion for a pre-discovery early settlement conference (ECF No. 21)

21 The Court finds these matters properly resolved without a hearing. LR 78-1.

22 **I. Background.**

23 Plaintiff—NDOC Inmate # 87052—is a frequent litigator in this Court. In the instant suit,  
24 Plaintiff sues a corrections officer, Defendant "Harper" for not wearing a mask in the presence of  
25 inmates. (ECF No. 1-1). After Rands appeared on Defendant's behalf, Plaintiff filed a "motion  
26 to replace SDAG D. Rands, C. Fondi, and R. Bibee," claiming that "there's no chance of me and  
27 him ever working to resolve stuff! And C. Fondi & R. Bibee must too go as they have been  
28 indoctrinated..." (ECF No. 8). Rand responded on Defendant's behalf, opposing Plaintiff's

1 motion and adding that “CO Harper has never worked at HDSP. This will be the subject of a  
 2 subsequent motion.” (ECF No. 9). Plaintiff then reasserted his motion to remove Rands, Fondi,  
 3 and Bibee, claiming that Rands’ statement that “CO Harper has never worked at HDSP” is a lie.  
 4 (ECF No. 11). Plaintiff adds that he plans on “taking every case to trial with no less than (300)  
 5 filings just to show [Rands] how to listen to reason...” (ECF No. 11).

6 A few days later, Plaintiff moved for appointment of counsel, claiming that the matters in  
 7 his case are too complex for his comprehension and abilities. (ECF No. 12). At the end of his  
 8 motion, Plaintiff adds a threat. (*Id.*). He claims that, if the Court does not appoint counsel, he  
 9 “will make good with his promise if Rands remains on any case to file at least (300) one pg. to 3  
 10 pg. motions to spite him so he can reply to them with 3 to 13 page responses.” (*Id.*). Plaintiff  
 11 also moved to add an exhibit to his motion for appointment of counsel. (ECF No. 13). The  
 12 exhibit—which Plaintiff appears to claim proves that Rands lied about Harper—is a motion that  
 13 Plaintiff filed on behalf of another inmate in the other inmate’s case against Harper. (*Id.*).  
 14 Plaintiff then filed a “motion of inquiry,” asking the Court to order Rands to send Plaintiff a copy  
 15 of Rands’ response to ECF No. 11. (ECF No. 15).

16 After an unsuccessful early inmate mediation conference, Plaintiff filed a motion for a  
 17 “pre-discovery early settlement conference.” (ECF No. 21). Displeased with the outcome of the  
 18 first mediation, Plaintiff asks for another. (*Id.*). Plaintiff adds that he believes this Court is  
 19 responsible for “the lack of any type of offers by the AG’s office...” (*Id.*).

## 20 **II. Discussion.**

### 21 ***A. The Court denies Plaintiff’s motions to replace Rands, Fondi, and Bibee.***

22 Motions to disqualify counsel are disfavored and are only granted when “absolutely  
 23 necessary.” *Russell Road Food and Beverage, LLC v. Galam*, No. 2:13-cv-0776-JCM-NJK, 2014  
 24 WL 3845424, at \*1 (D. Nev. July 31, 2014) (quoting *Switch Comm’s Grp. v. Ballard*, No. 2:11-  
 25 cv-00285-KJD-GWF, 2011 WL 3859725, at \*2 (D. Nev. Aug. 31, 2011)). Courts are especially  
 26 vigilant that such motions not be misused for the purpose of harassment, delay, or other tactical  
 27 advantage. *See id.* “Because of this potential for abuse, disqualification motions should be  
 28 subjected to particularly strict judicial scrutiny.” *Optyl Eyewear Fashion Int’l Corp. v. Style Cos.,*

1 *Ltd.*, 760 F.2d 1045, 1050 (9th Cir.1985) (internal quotations and citations omitted). The party  
 2 seeking disqualification bears the burden of proof. *See, e.g., Takiguchi v. MRI Int'l, Inc.*, No,  
 3 2:13-cv-1183-JAD-VCF, 2014 WL 3105068, \*4 (D. Nev. July 7, 2014). “A motion to disqualify  
 4 should be accompanied by declarations and admissible evidence sufficient to establish the factual  
 5 predicate on which the motion depends.” *Colyer v. Smith*, 50 F.Supp.2d 966, 967  
 6 (C.D.Cal.1999).

7 Here, the Court denies Plaintiff’s motions to disqualify counsel. In his first motion,  
 8 Plaintiff provides no reason—other than his belief that he cannot work with Rands—to disqualify  
 9 Rands, Fondi, or Bibee. (ECF No. 8). Plaintiff also fails to provide any evidence to carry his  
 10 burden of proof. In his second motion, Plaintiff asserts that Rands, Fondi, and Bibee must be  
 11 disqualified because Rands “lied when he stated Harper never worked at (HDSP).” (ECF No.  
 12 11). Again, Plaintiff provides no evidence to support this statement. While Plaintiff appears to  
 13 assert that the motion that he drafted on behalf of another inmate in a case involving Harper is  
 14 proof that Rands lied about Harper working at HDSP, this is not sufficient evidence to prove that  
 15 fact. Nor is it sufficient to overcome the disfavor with which courts scrutinize motions to  
 16 disqualify. Finally, Plaintiff makes no connection between either of his motions to disqualify and  
 17 Fondi or Bibee. The Court thus denies Plaintiff’s motions to disqualify.

18 ***B. The Court denies Plaintiff’s motion for appointment of counsel.***

19 Civil litigants do not have a Sixth Amendment right to appointed counsel. *Storseth v.*  
 20 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). In very limited circumstances, federal courts are  
 21 empowered to request an attorney to represent an indigent civil litigant. For example, courts have  
 22 discretion under to 28 U.S.C. § 1915(e)(1, to “request” that an attorney represent indigent civil  
 23 litigants upon a showing of “exceptional circumstances.” *Ageyman v. Corrections Corp. of*  
 24 *America*, 390 F.3d 1101, 1103 (9th Cir. 2004). These instances are exceedingly rare and require a  
 25 finding of extraordinary circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-  
 26 800 (9th Cir. 1986). The difficulties inherent in proceeding *pro se* do not qualify as exceptional  
 27 circumstances. *See Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990). Any *pro*  
 28 *se* litigant “would be better served with the assistance of counsel.” *Rand v. Rowland*, 113 F.3d

1 1520, 1525 (9th Cir. 1997) (citing *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986)).  
 2 To determine whether the “exceptional circumstances” necessary for appointment of counsel are  
 3 present, courts evaluate (1) the likelihood of plaintiff’s success on the merits and (2) the  
 4 plaintiff’s ability to articulate his claim *pro se* “in light of the complexity of the legal issues  
 5 involved.” *Agyeman*, 390 F.3d at 1103 (quoting *Wilborn*, 789 F.2d at 1331). Neither of these  
 6 factors is dispositive and both must be viewed together. *Wilborn*, 789 F.2d at 1331.

7 Here, the Court does not find any exceptional circumstances. Upon review of Plaintiff’s  
 8 complaint and supporting documents—including his exhibit (ECF No. 13)—it is not clear that  
 9 Plaintiff’s claims are likely to succeed on the merits. Further, the claims, such as they are, are not  
 10 complex. The Court will therefore deny the motion.

11 ***C. The Court grants Plaintiff’s motion to include an exhibit.***

12 Plaintiff requests the Court’s leave to include an exhibit to his motion for appointment of  
 13 counsel which Plaintiff appears to assert was inadvertently not included. Defendant did not  
 14 object to Plaintiff’s motion. The Court thus grants the motion in part, only to the extent it  
 15 requests that the Court consider the exhibit in conjunction with the motion for appointment of  
 16 counsel.

17 ***D. The Court denies Plaintiff’s “motion of inquiry.”***

18 In his “motion of inquiry” Plaintiff appears to ask the Court or Rands to send him a copy  
 19 of Defendant’s response to Plaintiff’s second motion to disqualify Rands, Fondi, and Bibee  
 20 because Plaintiff never received a copy. Plaintiff never received a copy because Defendant did  
 21 not respond to Plaintiff’s second motion. The Court thus denies Plaintiff’s motion as moot.

22 ***E. The Court denies Plaintiff’s motion for a pre-discovery early settlement***  
 23 ***conference.***

24 The Court notes that Plaintiff has attended multiple inmate mediations in civil rights  
 25 cases, including this one, which have been unsuccessful. (*See, e.g.*, 3:20-cv-00495-MMD-WGC).  
 26 Judges in this district have vacated mediations considering this. (*See, e.g.*, 2:20-cv-01822-RFB-  
 27 VCF, 2:20-cv-01686-JAD-DJA). The parties are free to privately discuss settlement if they so  
 28

1 choose but are not required to do so. The Court thus denies Plaintiff's renewed request for a  
2 settlement conference here.

3 **IT IS THEREFORE ORDERED** that Plaintiff's motions to remove Rands, Fondi, and  
4 Bibee (ECF Nos. 8 and 11) are **denied**.

5 **IT IS FURTHER ORDERED** that Plaintiff's motion for appointment of counsel (ECF  
6 No. 12) is **denied**.

7 **IT IS FURTHER ORDERED** that Plaintiff's motion to include an exhibit to his motion  
8 to appoint counsel (ECF No. 13) is **granted in part** only to the extent Plaintiff requests that the  
9 Court consider the exhibit in conjunction with the motion for appointment of counsel.

10 **IT IS FURTHER ORDERED** that Plaintiff's "motion of inquiry" (ECF No. 15) is  
11 **denied as moot**.

12 **IT IS FURTHER ORDERED** that Plaintiff's motion for a pre-discovery early settlement  
13 conference (ECF No. 21) is **denied**.

14 DATED: December 2, 2021



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DANIEL J. ALBREGTS  
UNITED STATES MAGISTRATE JUDGE